IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2057 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE JAYANT PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

JERAM KANJI PRAJAPATI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 2057 of 2004

MR KIRTIDEV R DAVE for Petitioner No. 1

Mr.R.M.Chauhan, Asst.GOVERNMENT PLEADER for Respondent No. 1-2

RULE NOT RECD BACK for Respondent No. 1-3

MR BY MANKAD for Respondent No. 3

CORAM : HON'BLE MR.JUSTICE JAYANT PATEL

Date of decision: 18/08/2004

ORAL JUDGEMENT

This court on 5.8.04 passed the following order:

"Rule returnable on 18.8.04.

2. Since the petitioner has already deposited an amount of 40,000/- and it primafacie appears that an opportunity of hearing has not been given by the tribunal in the appeal further steps for recovery deserve to be stayed.

3. I would have considered the matter for remand. But, Mr.Mankad for the respondent has requested that he would like to get the sense from his client, therefore, the ad interim relief granted earlier shall continue till18.8.04 with further direction that the petitioner also shall not transfer or alienate the property in question in any manner, whatsoever.

Put up on 18.8.04 in admission board."

2. When the matter is further taken up for hearing today Mr.Mankad the learned advocate appearing for the respondent No.3 Bank states that if this court finds that opportunity of hearing was not given to the petitioner by the tribunal before the impugned order is passed, the bank has no objection for remand. He further states that even the respondent Bank was also not heard by the tribunal before passing the impugned order.

3. Upon hearing the learned advocates appearing for parties, it appears that there is no dispute on the point that as initially the Inquiry Officer in the inquiry under section 93 fastened the responsibility upon the former President of the society , namely, Karsanbhai Narsibhai Umerpara, but he observed that since the former President has expired, his legal heirs shall be responsible. The legal heirs of deceased Karsanbhai have preferred appeal before the Tribunal and in the proceedings of the appeal, the petitioner who is said to have purchased the property of the deceased was not impleaded as party. The tribunal in the appeal has partly modified the order and has observed that the amount can be recovered from the property of the deceased and it is further ordered that in view of will of the deceased the property is received by petitioner Jeram Kanji Prajapati and therefore said amount can be recovered from the said property. In such a situation it

was required by the tribunal to give opportunity of hearing to the petitioner who is directly affected by the outcome of the appeal. As per the statement made by Mr.Mankad even the bank has also not impleaded as party. Whether the bank is required to be impleaded as party or not is a separate question but if the amount is to be recovered from the property which is acquired by the petitioner under the will of the deceased, the petitioner was necessary party to the proceedings of appeal and the tribunal could not have modified the order without giving hearing to the petitioner.

4. In the above circumstances, the order passed by the tribunal in appeal dated 8.11.2002 deserves to be quashed on the ground of nonjoinder of necessary parties and not giving opportunity of hearing to the petitioner herein. As a consequence thereof, the impugned order passed by the tribunal is quashed and set aside with further direction that the appeal shall stand restored to the file of the tribunal and the tribunal shall give opportunity of hearing to the parties and after hearing all concerned parties, shall decide the Appeal No.677/98 as early as possible preferably within a period of three months from the date of receipt of writ of this court. In case, the bank is desirous to be heard, it may move apropriate application before the tribunal in the proceedings of appeal.

5. Petition is allowed to the aforesaid extent. Rule is made absolute accordingly. In the facts and circumstances, there shall be no order as to costs.

It is made clear that the amount deposited by the petitioner pending the petition shall be subject to the final orders which may be passed by the tribunal in appeal.

18.8.04 (JAYANT PATEL,J)